

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

CIV 08-0382 LH/KBM
CR 04-2400 LH

JOSE GARCIA-CARDENAS,

Defendant-Movant.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

The Magistrate Judge filed her Proposed Findings and Recommended Disposition on May 23, 2008 and granted Defendant two extensions in which to file his objections. *See Docs. 7-11.* The objections provide that:

Movant would like to take the opportunity to thank this Honorable Court for its generosity in having granted the previous continuances sought. . . . After repeated requests for documentation (copy of Movant's case file) . . . from appellate counsel . . . to this day, such documentation has not yet been received, this impeding any and all further progress in this affair.

Rather than insult the generosity (sic) of this Court with frivolous arguments, and ill-prepared objections, Movant humbly *makes a general objection . . . in an effort to preserve the issues therein*, in the event

that a copy of Movant's file is obtained, and the issue Movant believe to be meritorious when § 2255 Motion was filed, can be substantiated.

Doc. 12 at 1-2 (emphasis added).

I note that general objections are not sufficient and waive appellate review, although in some circumstances the waiver may be excused.

“[O]nly an objection that is sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute will advance the policies behind the Magistrate's Act that led us to adopt a waiver rule in the first instance.” *United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996); *see also Soliz v. Chater*, 82 F.3d 373, 375-76 (10th Cir. 1996) (finding general objection “not sufficient to preserve the more specific issues plaintiff attempts to raise on appeal”); Fed.R.Civ.P. 72(b) (requiring a party to file “specific” objections). While “[t]he waiver rule may be suspended when the interests of justice warrant, or when the aggrieved party makes the onerous showing required to demonstrate plain error,” *Wardell v. Duncan*, 470 F.3d 954, 958 (10th Cir. 2006) (citation and quotation omitted), [Defendant] has offered no justification for invoking either of these exceptions and none affirmatively appears from the circumstances of the record. We therefore decline to consider issues three, four, five, and [part of six].

Davis v. Astrue, 237 Fed. Appx. 339, 342 (10th Cir. 2007).

I express no opinion whether Defendant's assertions are sufficient to overlook the general nature of his objections in the event that he appeals to the

Tenth Circuit.

Wherefore,

IT IS HEREBY ORDERED THAT:

1. The Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 7*) is ADOPTED;
2. Defendant's § 2255 petition is dismissed **with prejudice**; and
3. A final order enter concurrently herewith.



SENIOR UNITED STATES DISTRICT JUDGE